

UNITED STATES DISTRICT COURT

for the

District of Montana

United States of America

v.

Michael James Burke

Case No: CR 21-62-GF-BMM

USM No: 68161-509

Date of Original Judgment: 03/20/2023

Date of Previous Amended Judgment: _____

(Use Date of Last Amended Judgment if Any)

Defendant's Attorney

**ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(2)**

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

☒ **DENIED.** ☐ **GRANTED** and the defendant's previously imposed sentence of imprisonment (*as reflected in the last judgment issued*) of _____ months **is reduced to** _____.

(See Page 2 for additional parts. Complete Parts I and II of Page 2 when motion is granted)

Defendant seeks a sentence reduction under the retroactive application to the criminal history rules in Part B, subpart 1 of Amendment 821 to the United States Sentencing Guidelines. (*See* Doc. 172.) Defendant is ineligible.

Part B, subpart 1 provides a two-level offense level decrease for offenders who did not receive any criminal history points under Chapter Four and whose instant offense did not involve specific aggravating factors. *See* USSG Ret. App. A & B, Sub. 1 Amendment 821 "Reasons for Amendment" (Nov. 1, 2023). To qualify under Part B, subpart 1, the instant offense of conviction must not be a sex offense, which is defined as "an offense, perpetrated against a minor, under [] chapter 109A of title 18, United States Code." USSG §4C1.1(a)(5), (b)(2).

Here, Defendant's prior convictions resulted in a total criminal history score of zero. (PSR ¶ 52.) However, Defendant was convicted on two counts of aggravated sexual abuse of a child, in violation of 18 U.S.C. §§ 2241(c), 1153(a), and one count of abusive sexual contact, in violation of 18 U.S.C. §§ 2241(a)(1), 2244(c). (Judg. at 1.) All three offenses of conviction are housed under chapter 109A of title 18 of the United States Code and disqualify Defendant from Amendment 821. Because Defendant is clearly ineligible for a sentence reduction under the retroactive application of Amendment 821, his motion is denied.

Except as otherwise provided, all provisions of the judgment dated _____ shall remain in effect.

IT IS SO ORDERED.

Order Date: 07/23/2024



Judge's signature

Effective Date: _____
(if different from order date)

Brian M. Morris, Chief District Judge

Printed name and title